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COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION
OF MINORITIES

Eleventh Session

SUMMARY RECORD OF THE TWO HUNDRED AND FIFTY-FIFTH MEETING

Held at Headquarters, New York,
on Tuesday, 6 January 1959, at 11.10 a.m.

CONTENTS

Study of discrimination in the field of employment and occupation
(E/CN.4/Sub.2/192; ILO Convention 111 and Recommendation 111;
Reference Paper (Extracts from Provisional Records Nos. 21, 29 and
30 of the Forty-second Session of the International Labour
Conference); E/CN.4/Sub.2/L.148)

PRESENT:

<u>Chairman:</u>	Mr. AWAD	(United Arab Republic)
<u>Rapporteur:</u>	Mr. SAARIO	(Finland)
<u>Members:</u>	Mr. BEYHUM	(Lebanon)
	Mr. CHAYET	(France)
	Mr. FOMIN	(Union of Soviet Socialist Republics)
	Mr. HISCOCKS	(United Kingdom of Great Britain and Northern Ireland)
	Mr. INGLES	(Philippines)
	Mr. KRISHNASWAMI	(India)
	Mr. MACHOWSKI	(Poland)
	Mr. ROY	(Haiti)
	Mr. SANTA CRUZ	(Chile)
	Mr. SPAULDING	(United States of America)
<u>Also present:</u>	Miss MAÑAS	Commission on the Status of Women

Representatives of specialized agencies:

Mr. METALL	International Labour Organisation
Mr. GAGLIOTTI	United Nations Educational, Scientific and Cultural Organization

Representatives of non-governmental organizations:

<u>Category A:</u>	Mr. THORMANN	International Federation of Christian Trade Unions
<u>Category B:</u>	Miss SMITH	International Federation of Women Lawyers
<u>Secretariat:</u>	Mr. HUMPHREY	Director, Division of Human Rights
	Mr. LAWSON	Secretary of the Sub-Commission

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STUDY OF DISCRIMINATION IN THE FIELD OF EMPLOYMENT AND OCCUPATION

(E/CN.4/Sub.2/192; ILO Convention 111 and Recommendation 111; Reference Paper (Extracts from Provisional Records Nos. 21, 29 and 30 of the Forty-second Session of the International Labour Conference); E/CN.4/Sub.2/L.148)

Mr. ROY recalled that there had been some division of opinion at the previous session of the Sub-Commission regarding the advisability of the Sub-Commission's commenting in detail on the draft convention and the draft recommendation prepared by the ILO. He welcomed the Sub-Commission's decision to consider the texts in detail, as its comments had been taken into account when the final text of Convention 111 had been adopted at the Forty-second Session of the International Labour Conference. A comparison of paragraphs 40, 43, 51, 54, 56 and 60 of the report of the tenth session of the Sub-Commission (E/CN.4/Sub.2/192) with the final text made that clear. Similar attention had been paid to the Sub-Commission's comments on the draft recommendations, so that, although the final texts were not perfect, they could be considered satisfactory on the whole.

He felt that the Sub-Commission should express its satisfaction by adopting a resolution noting that the Convention and the Recommendation were in harmony with its views, congratulating the ILO on the adoption of the Convention and expressing the hope that Governments would ratify it as soon as possible.

Mr. FOMIN said that, although many of the Sub-Commission's comments had indeed been taken into account by the ILO, some others had been disregarded.

In comparison with the ILO's previous activity in the matter, the Convention was a step forward. It provided for the repeal of amendment of out-dated laws which countenanced discrimination, for the elimination of situations of discrimination in the activity of administrative bodies and for the promotion of educational measures in that sphere. However, that was but a first and rather timid step forward. It did not include a prohibition of racial discrimination propaganda, it did not mention the need for eradicating segregation of workers based on characteristics of race and colour. The Convention was seriously deficient in several respects; for instance, it laid no binding obligation on Governments to enact prohibitory legislation and to take practical measures to eliminate discrimination in that sphere, and also to provide for strict accountability for

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(Mr. Fomin)

such discrimination. That did not mean that the ILO was not to be congratulated on what it had done; but it should not be allowed to feel that it had completed its task. Moreover, it was impossible to know how it would be. He agreed with Mr. Roy that the Sub-Commission might welcome the adoption of the Convention as a first step, but other measures would have to be taken if any positive results were to be achieved.

Furthermore, even if the Convention was ratified by the Governments of all the countries in which there was discrimination in the field of employment, that would not secure the complete eradication of such discrimination. However, it was evident from the documents presented that already one State in which discrimination was practised in that sphere had in effect refused to accede to the Convention. In view of that fact, there was all the more reason for not remaining satisfied with what had already been achieved. The question should therefore be kept on the agenda of future sessions of the Sub-Commission and both it and the ILO should ponder what steps they should take, either jointly or separately, to achieve that aim.

Mr. SAARIO remarked that the ILO was to be congratulated on the skilful and rapid manner in which it had carried out its task. Opinions had differed both within the Sub-Commission and within the ILO on whether a convention or a recommendation should be adopted. The decision to adopt two texts might well turn out to be a happy one, since it would enable some action to be taken by the largest possible number of States. The Convention would set up a goal for those States which initially applied only the Recommendation. He agreed with Mr. Fomin that the item under consideration should be maintained on the agenda.

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Mr. KRISHNASWAMI said that the Sub-Commission should indeed be gratified that the ILO had adopted so many of its suggestions. No one could deny that an important step had been taken towards eliminating discrimination in employment and occupation. The next step was to concentrate on measures to improve the texts which had been adopted. He wished to refer to certain deficiencies in those texts, not in a spirit of carping criticism, but in order to draw attention to the need to fill the existing gaps as soon as possible. The major omission in the Convention was the lack of reference to the need for Governments to adopt a policy promoting full employment and economic growth. Where those conditions existed, the demand for labour had the effect of eliminating discrimination in respect of employment and occupation. It was necessary not only to legislate against discrimination, but to create a social and economic climate in which it did not flourish. That was an important point which had been included in several other instruments and should not have been overlooked in the ILO Convention. The preamble to that text could usefully contain a clause mentioning the reference in the Preamble of the United Nations Charter to the promotion of social progress and better standards of life.

He also felt some concern at several other aspects of the Convention. He regretted the use in article 1, sub-paragraph 1 (a) of the term "national extraction", which the International Labour Conference had found it necessary to define. The interpretation of that term given by the Conference's Drafting Committee was in line with paragraph 8 of the ILO Recommendation. He wished, however, that both provisions had been extended to embrace stateless persons, as they were not covered by the Migration for Employment Convention (Revised), 1949. Their status and particularly that of persons affected by nationality laws of newly independent States, was in many countries worse than that of immigrants. The ILO, as the body primarily concerned with the question of the right to employment, had a duty to consider the case of stateless persons as soon as possible.

There would, however, be a better possibility of amending the ILO texts once some experience had been gained of their application, and efforts should therefore be made to secure early ratification of the Convention by the largest possible number of Governments.

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Mr. SANTA CRUZ said that the procedure followed in dealing with the question of discrimination in respect of employment and occupation had resulted in a happy co-operation between the United Nations and a specialized agency. As in the past, it had been found useful to have a question considered by a body with specialized experience and to benefit from its particular knowledge of the problem. Although he welcomed the results achieved, he was, like others, not entirely satisfied with the texts adopted by the International Labour Conference. The terms "national origin" and "language" contained in article 2 of the Universal Declaration of Human Rights should have been used in article 1, sub-paragraph 1 (a) of the Convention, since the entire question had originated in the United Nations with the object of giving effect to certain provisions of the Declaration. He also supported Mr. Krishnaswami's suggestion that the Convention should contain some reference to the desirability of promoting full employment and economic growth.

He wished to submit for the Sub-Commission's consideration a draft resolution on the study of discrimination in the field of employment and occupation (E/CN.4/Sub.2/L.148) which was entirely similar in intent to that suggested by Mr. Roy. Indeed, he hoped that Mr. Roy would join with him in sponsoring the text. The draft resolution also took into account points made by other speakers. He agreed with Mr. Fomin that the Sub-Commission's task was not necessarily complete; accordingly, operative paragraph 2 of the draft resolution might include a request to the Secretary-General to report to the Sub-Commission on the manner in which Governments were ratifying the Convention, and the question could then be discussed further at forthcoming sessions.

Mr. ROY stated he would be happy to join with Mr. Santa Cruz in co-sponsoring a text. With reference to the form of draft resolution E/CN.4/Sub.2/L.148, he suggested that in operative paragraph 1 the expression "some recommendations" was inaccurate as the ILO had adopted only one recommendation on the question, and that in operative paragraph 2 the use of the verb "to invite" was inappropriate in the circumstances. He also agreed with Mr. Fomin that it was necessary to indicate that the task of the Sub-Commission and of the ILO was not complete. A paragraph to that effect could readily be added.

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Mr. MACHOWSKI said that although the Convention was not ideal, it did constitute a step forward. The Sub-Commission's main task now was to help to ensure the implementation of the Convention's provisions by Governments. Accordingly, the resolution which the Sub-Commission would ultimately adopt should contain a decision to maintain the item on its agenda and a request to the Secretary-General to report to it at its twelfth session on any action taken to eradicate discrimination in the field of employment and occupation and on the implementation of the Convention. It was premature to speak of amendments to a Convention which had been adopted barely six months ago. The Sub-Commission should observe how it was being implemented before suggesting any changes.

Mr. CHAYET said that the ILO was to be congratulated on taking account of many of the views expressed in the Sub-Commission. The Convention, however imperfect, represented a first step. However, the mere existence of a text was not sufficient; the goal to be sought was its full implementation. If the terms of the Convention had been more extreme, there would be far less likelihood of achieving that goal.

The Sub-Commission should guard against over-zealousness in its endeavour to promote the implementation of the Convention. Essentially, measures to that end were within the competence of the ILO. By maintaining the item on its agenda, the Sub-Commission might expose itself to unfavourable criticism, particularly in view of the many other important questions awaiting its attention. Furthermore, the Convention was barely six months old, so that the Sub-Commission could not reasonably expect a large number of ratifications before its twelfth session. At least two years were required for a sufficient number of ratifications, and still more time would elapse before the provisions of the Convention became operative in the various countries. Consequently, the Sub-Commission would have little to work on for the next three or four years.

Miss MANAS (Commission on the Status of Women) recalled that at the Sub-Commission's tenth session, the representative of the Commission on the Status of Women had requested the deletion of article 6 of the then draft convention on discrimination in the field of employment and occupation, on the grounds that it excluded from the scope of the convention equal remuneration for men and women for work of equal value. The Commission on the Status of Women...

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(Miss Mañas, Commission on the Status
of Women)

had therefore been gratified by the decision, taken by a large majority at the International Labour Conference, to delete article 6 from the final text of the Convention. That decision illustrated the value of co-operation between the various organs of the United Nations; the participation of the Commission on the Status of Women in the Sub-Commission's work had produced a highly satisfactory result.

Miss SMITH (International Federation of Women Lawyers) also expressed particular satisfaction regarding the deletion of that article. The new Convention represented a sound basis for the progressive eradication of discrimination in the field of employment and occupation. In recognition of the need for its full implementation, the International Federation of Women Lawyers had adopted a resolution in August 1958 recommending that all member States which had not yet done so should ratify the Convention and should take all necessary steps to implement the ILO Recommendation on the subject, including the provisions dealing with vocational training and equal remuneration for work of equal value. The Federation and its affiliates were pledged to work for the implementation of both instruments.

Mr. THORMANN (International Federation of Christian Trade Unions) expressed satisfaction at the action taken by the ILO. The IFCTU agreed that the adoption of a convention was an effective international approach to the problem of discrimination in the field of employment and occupation. The adoption of an international instrument with binding effect and the education of public opinion with a view to eradicating prejudice were not mutually exclusive methods of dealing with the problem. The very existence of the Convention should have a powerful impact on public opinion. Indeed, in its article 3, sub-paragraph (b) the Convention called for the promotion of educational programmes calculated to secure the acceptance of an anti-discrimination policy. It was gratifying to note that States ratifying the Convention were committing themselves to promote such programmes. On the other hand, article 3, sub-paragraph (e) might have been strengthened by an amendment making it applicable to all vocational guidance, vocational training and

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(Mr. Thormann, IFCTU)

placement services, whether or not they were under the direction of a national authority. The inclusion in the Convention of a reference to non-metropolitan territories was another feature of which the IFCTU warmly approved.

The adoption of the Convention and the Recommendation was a most important step forward in the efforts to eradicate all forms of discrimination in the field of employment and occupation. Trade union organizations had a special responsibility for seeing that both instruments were properly applied. For its part, the IFCTU pledged all its resources towards that end. It further considered that the Sub-Commission could usefully request the Economic and Social Council, through the Commission on Human Rights, to appeal to all Governments to ratify the Convention as early as possible.

Mr. INGLES said that he shared the general satisfaction at the action taken by the ILO. The changes made in the original draft with a view to strengthening and improving the Convention reflected to a large extent the views expressed in the Sub-Commission. The Sub-Commission should not, however, consider that it had finished its work on discrimination in the field of employment and occupation. It was clear from article 12 of the Convention that the ILO itself did not feel that it had disposed of the problem permanently. In the light of that article, the Sub-Commission might wish to include in Mr. Santa Cruz' draft resolution a request to the Secretary-General to transmit to it any report of the ILO Governing Body to the International Labour Conference on the working of the Convention and any proposals for the revision of the Convention in whole or in part. The Sub-Commission should also be authorized to transmit its views on such reports and proposals to the ILO. The Recommendation, having been adopted by the Conference, was already effective. Accordingly, the draft resolution might include a request that the Sub-Commission should be informed of the steps taken by members of the ILO to implement it. Such information would be valuable because, unlike the Convention, the Recommendation applied to all members of the ILO without exception.

The meeting rose at 12.55 p.m.